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WACHOVIA BANK, N.A. AS TRUSTEE (BAYVIEW)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

WACHOVIA BANK, N.A. AS TRUSTEE
(BAYVIEW), a national banking association

Plaintiff,

v.

JOHN CLIFTON ELSTEAD, an individual;
SANDRA F. ELSTEAD, also known as
SANDRA F. WAGNER, an individual; TITLE
INSURANCE AND TRUST COMPANY, a
California corporation; FIDELITY NATIONAL
TITLE INSURANCE COMPANY, a California
corporation; SUSAN ELSTEAD, an individual;
LAW OFFICES OF WALKER & DURHAM, an
entity of unknown form; THE UNITED
STATES OF AMERICA; MBNA AMERICA
BANK, N.A., a national banking entity;
MEUSER COLLECTION COMPANY doing
business as MEUSER OF CALIFORNIA, a
California corporation; UNIVERSAL FENCES
& SUPPLY, INC., a California corporation; THE
CITY OF OAKLAND, a municipal entity; DOES
1 through 100, inclusive,

Defendant.

CASE NO.: CV076015 SI

Assigned to: Hon. Susan Illston

**EVIDENTIARY OBJECTIONS TO
DECLARATION OF DEFENDANT JOHN
CLIFTON ELSTEAD'S DECLARATION
FILED IN SUPPORT OF MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT**

DATE: February 15, 2008
TIME: 9:00 a.m.
DEPT: "10"

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Plaintiff Wachovia Bank N.A., as Trustee (Bayview) ("Plaintiff"), hereby submits the following in objection to the Declaration of Defendant John Clifton Elstead ("Defendant" or Elstead") filed in support of his Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted as follows:

1 Chase objects to the entirety of paragraph 2, on the grounds that such allegations lack foundation and are irrelevant pursuant to FRE §§ 401, 402, 403, 602.

2 Chase objects to the entirety of paragraph 3 and Exhibits 2, 3, 6 of the Declaration as it and the Exhibits because they lack foundation and are irrelevant pursuant to FRE §§ 401, 402, and 403. In deciding a motion to dismiss for failure to state a claim, however, the court's review is generally limited to the contents of the complaint. *Campanelli v. Bockrath*, 100 F.3d 1476, 1479 (9th Cir. 1996). Nothing in exhibits 2, 3, 6 was alleged in the First Amended Complaint.

DATED: January 25, 2008

ADORNO YOSS ALVARADO & SMITH
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By: /s/ S. Christopher Yoo
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